

WASHINGTON, February 17th, 1844.

To the Hon. T. W. LIGON,

House of Delegates, Maryland.

SIR:—In compliance with the suggestion made when I had the pleasure of seeing you in Washington, permit me to make the following remarks, not directly applicable to the inquiries made by the Hon. Wm. W. McKaig, in his communication on the subject of coal.

The richness of the Cumberland coal, its friable nature will not bear transportation in Rail Road cars—by repeated handling it is readily reduced to fine coal, and its value very much reduced. The stokers and firemen on board of our War Steamers, find it difficult to manage as it requires the constant application of the slice bars of the firemen, and the intense heat of the Engine room ranging from 120° to 140° of Fah. thermometer, disinclines the firemen to use it and the fine coal is accordingly thrown away—the official report from the War Steamer Missouri gives a large per centage of waste.

I have proposed to the Hon. Secretary of the Navy, the propriety of sending an Engineer to inspect the coal at the mines, and I have no doubt this will be done, and when this inspection is commenced the French line of Steamers will immediately adopt the use of the Cumberland coal.

The French nation is extremely jealous of the English on this subject, as the export duty on coals is very considerable, France yielding but little coal they will take every means to supply themselves from this country.

It is also worthy of remark, that it is now under serious consideration in Pennsylvania, to impose a tax of fifty cents a ton on all coals sent out of the State, and I cannot perceive any injustice in this, as the cost of the article to the consumer would have been full one hundred per cent above its present price, had the Rail Roads and Canals not been constructed. It may not be politic to place this tax on as a tax “eo nomine”—it may be judicious only to advance the tolls on the canal.

I regret very much that the returns from the several Navy Yards have not been made. I shall however, do myself the pleasure of transmitting them if their contents are interesting.

I sincerely hope, that the Legislature of Maryland will take some decided steps in this important matter, I should regret extremely to see her hesitating in so important an undertaking, when so nearly completed. That it is her true interest to complete the work, and that she will be indemnified, I have no doubt.

Your obedient servant,

G. L. THOMPSON.

[Document W.]

BY THE HOUSE OF DELEGATES,
February 21, 1844.

Read and ordered to be printed.

R E P O R T

OF THE

SELECT COMMITTEE,

TO WHICH WAS REFERRED THE ENQUIRY

Whether the Pennsylvania, Delaware and Maryland

STEAM NAVIGATION COMPANY,

AND THE

CHESAPEAKE AND DELAWARE CANAL COMPANY,

HAVE NOT

FORFEITED THEIR CHARTERS.

ANNAPOLIS:
RILEY & DAVIS, PRINTERS.

.....
1844.

R E P O R T .

The committee, to which was referred the enquiry, "whether the Pennsylvania, Delaware and Maryland Steam Navigation Company, and the Chesapeake and Delaware Canal Company, have not forfeited their charters," beg leave to

R E P O R T .

The allegations, under which the order of the House and the creation of your committee arose, related to illegal and excessive tolls exacted by the Chesapeake and Delaware Canal upon passengers passing through their canal, and also to alledged combinations with other companies, by which a dangerous monopoly had been created alike prejudicial to the rights and interests of the public. It was supposed that these allegations if proved, would work a forfeiture of the charters of the said Companies, and your committee, therefore, addressed its deliberations exclusively to the consideration of these charges. To the original charter of the Canal Company and the several supplements thereto, your committee first looked for the powers and franchises of this corporation, because like all other corporations, which are the mere creatures of the Legislature, it has and can have none other than those that have been clearly and in express terms granted to it, and your committee, therefore, proceeded to ascertain what powers were expressly granted to this company by the original charter and the various supplements, in order that it might determine whether those powers had been transcended. In relation to tolls the charter and supplements simply authorise this company to charge tonnage on merchandize passing through the canal at a fixed rate, and gives no right whatever to charge any other tolls except upon vessels or boats not having commodities on board; and in this respect it is placed on precisely the same footing with the other canals of the State, in all of which the tolls are confined to merchandize and merchandize alone. There is no instance, as your committee believe, where canal companies in this State have been empowered to charge toll *per capita*

upon passengers. With a view therefore of ascertaining, with accuracy, the facts upon which these allegations rested, the committee addressed interrogatories to the Chesapeake and Delaware Canal Company, which were answered by the President, Mr. Newbold, under date of the 31st January, and the 5th February, and along with these answers sundry documents were exhibited and referred to. The committee also addressed interrogatories to Messrs. Peck, Clyde & Company, proprietors of a line of steam boats, driven by Errickson propellers, and running through this canal, which were answered under date of the 3rd inst. In addition to the information thus obtained, the committee had before it a correspondence between the Chesapeake and Delaware Canal Company and Messrs. Stockton, Falls & Company, and Messrs. Hutchinson and Weart, proprietors of stage lines west of Cumberland, who proposed establishing a line of passenger boats between Philadelphia and Baltimore, by way of the canal, all of which documents will be found in the appendix to this report.

From all the information which this committee has been able to collect, it is ascertained that this company from the time of the completion of the work in 1829, has been in the constant habit of charging for passengers passing through the canal, at rates, the variation and unusual character of which will be commented upon in another part of this report.

It is, however, proper here to advert to the grounds of justification urged by the company, for the exercise of power to charge toll on passengers, as it is not even pretended that this right is given in express terms by either the original charter or any of the supplements thereto, but it is contended, that as the exclusive property in the canal is vested in the company, that therefore, it follows as a necessary consequence that all powers not expressly prohibited, are granted, and that the company has the right to make any contracts or agreements which do not conflict with the express provisions of the charter.

Against such a doctrine of construction your committee enter their protest, and beg leave to examine for a moment the consequences of such an assumption of power on the part of any corporation. This construction would make the corporation the master and the State the slave, which is reversing all our preconceived ideas of State sovereignty: for if the creature is to judge of the implied powers granted, it follows necessarily that it will usurp all that are not expressly prohibited by its charter, and thus the privilege is relied upon by the company in question, and that in the face of the often repeated decisions of the highest Judicial tribunals of this State and of the United States, which have declared that a corporation is entitled to no franchise not expressly granted by its charter, unless the same be absolutely necessary to carry out the main object contemplated by the charter, and therefore it follows that the sovereign and not the creature is entitled to all powers not expressly granted.

We now come to the consideration of that portion of the investigation which relates particularly to the right claimed by this company, to charge toll on passengers, and it may not be amiss again to repeat that this right is not contended for under any express grant in the act of incorporation, but relying on the opinions of able counsel in Philadelphia, it is claimed as a constructive or implied power. It is boldly asserted that because the charter is silent on this subject, and because this company is not required to carry passengers, that it follows, if they do carry them, that they have the right to charge toll, but your committee would enquire from whence does this company derive authority to charge toll on any article whatever except from the charter itself. If then this power is solely derived from the act of incorporation how can it be pretended that the company has the right to make any charge not authorised by that act? It is insisted, however, that they do not charge toll on passengers in the strict sense of that term, but that they have merely agreed with the owners of the boat, in which they are conveyed, for the payment of a gross sum, varying according to the numbers conveyed; and this company further rely upon the fact that they have, for twelve years past, been notoriously charging upon passengers without objection, as evidence of some weight in establishing their right to do so. This mode of reasoning your committee regards as entirely fallacious, and it would be as novel in theory as dangerous in practice, to give a corporation powers by implication. Who, your committee would ask, is to determine the extent of these constructive powers? Certainly the Legislature never intended, in granting these charters, that the corporation itself should be clothed with the unlimited power to judge of its own franchises. Where would be the limit of such a power? There would be none, for if the power exists at all it exists to any extent and it could not be expected that the corporation would fix any limit to restrain its own privileges. If therefore the corporation itself is to be the sole judge of what are or are not its implied powers, its privileges are unlimited. In the opinion of the counsel referred to, there is a studious attempt to distinguish between a toll on passengers and an agreement with the owner of a boat to pay him a gross sum, correspondent to the number of passengers. This indirect mode of charging the toll your committee cannot but regard as an evasion. Your committee hold that the company cannot do *indirectly* what they cannot do *directly*, but the fact of the charge having been *thus* made, seems to be regarded by the counsel as important and it would not have been so prominently introduced if the company had been FULLY SATISFIED of their RIGHT to charge the toll, for if they had been so satisfied, they would doubtless have made the charge and defended it directly and manfully.

Your committee repeat that they cannot see the distinction, thus attempted to be made. In PRINCIPLE it must surely be the same, whether the toll-gatherer takes twenty-five cents, from each passenger in person, or whether he demands and receives from the Captain of the boat, twenty-five dollars for one hundred passengers.

It is the passenger who pays, and the company who receives in both cases, and the only difference is that in one case the toll-gatherer collects for the company, whereas, in the other the Captain does. In either case the toll ensures equally to the benefit of the company, and to the company alone. But in whatever mode the toll may be collected, your committee utterly deny the constructive authority, thus claimed by this company, and have only to point to the consequences of its exercise to illustrate how dangerous is the doctrine on which it rests. On the whole therefore, upon this branch of the subject, your committee cannot but regard the charge of tolls upon passengers by this company as a clearly unwarranted act, no where justified by its charter, and beyond the just limits of its authority. The sound rule to be adopted in this and similar cases is, that corporations should adhere strictly to the letter of their charter, as there and there alone are to be found their powers and franchises and the extent thereof. If it should be found necessary to ask new powers, in order to give full effect to the meaning of the Legislature in granting them, it is the correct, as it certainly is the safe and respectful course to apply to the Legislature for aid. The same spirit of liberality and regard for the public welfare, which at first prompted the State to give them a corporate existence, will be ever found ready to confer such new powers and privileges as shall be found necessary to carry out the object of their incorporation. If this company, which certainly never asked when they applied for their charter for any such power, had found it advantageous to themselves or beneficial to the public, to add the transportation of passengers to that of merchandise, it should have come to the Legislature, representing that fact and asking the privilege to charge a reasonable toll *per capita* upon passengers, there cannot be a doubt but that they would have obtained such a power without any difficulty. The company however, chose to take another course and proceeded to transcend their just powers, by torturing and wresting them from their obvious import, thereby establishing a precedent as dangerous in theory as it is unwarrantable in fact.

Your committee will now dismiss this branch of the subject, relating to the RIGHT to charge tolls upon passengers, and will proceed to a no less interesting state of facts which have been developed to them in the progress of their examination, and upon which they cannot refrain from commenting. They refer to the MANNER in which these tolls upon passengers were made, and the extraordinary VARIATIONS which are found to exist in the company's action on the subject. If the company had no right to charge these tolls, still less had they a right to impose them in such a manner as to create a large monopoly, in the highest degree odious, and opposed to the letter and spirit of our Government, and the legislation under it. Neither the President, or the said counsel of the company, have said any thing as to these extraordinary variations, and it is fair to infer that they would have preferred to have had them passed over in silence, for it could hardly be contended that

even the CONSTRUCTIVE OR IMPLIED powers of their charter, as claimed by them, could confer the right to expand or contract at pleasure these tolls, in such a manner as to establish one of the boldest, as well as most odious and unjust monopolies that ever existed. It was doubtless recollected that the organic law of the State, which declares that "MONOPOLIES ARE ODIOUS, CONTRARY TO THE SPIRIT OF FREE GOVERNMENT AND OUGHT NOT TO BE SUFFERED," was a part and parcel of their charter, and entered into its very constitution; and your committee call your attention particularly to these facts, which have been studiously overlooked by the counsel of the company. The papers and documents appended to this report and other notorious facts, will sustain the following statement or history of this company and others connected with it, and at the same time show the true character of the monopoly on which it has become their unpleasant duty to comment.

Up to the year 1838, with the exception of two or three years, when there were passenger barges on the canal, most of the travel between the cities of Baltimore and Philadelphia, was confined to a line of Steamboats running from Baltimore to Frenchtown, thence by Rail Road to Newcastle, and thence by Steamboat to Philadelphia. This route was almost without a rival, as the Chesapeake and Delaware canal offered to it but a partial competition, on account of the difference of speed and the detention arising from transferring the passengers from one boat to another.

In order then to offer a fair competition to that route, which was then regarded as almost the only practicable one, the Rail Road now known as the Philadelphia, Wilmington and Baltimore Rail Road was undertaken, and for the most part completed by three or four distinct companies, all of which, by an arrangement among themselves and by the consent of the several States through which they passed, consolidated their stock under the name of the Philadelphia, Wilmington and Baltimore Rail Road company. Maryland assented to this consolidation for the promotion of her welfare and the advancement of the interests of the travelling public. But while she was at that time ready and desirous to unite with others, in the advancing state of travelling facilities, she was even at that time jealous of the monopolising character and tendency of these great improvements. In the very act consolidating these companies, she re-enacted all the pre-existing limitations and restrictions contained in their former charters, and among these your committee would invite your particular attention to an express prohibition, in the act itself, of any union of the Philadelphia, Wilmington and Baltimore Rail Road company with the Frenchtown and Newcastle Rail Road or Turnpike company. The Legislature was, at that early day, before any monopoly had been realised or attempted, studious to guard the interests of the public from such a combination; for it was clearly seen that such a combination would be dangerous, and if carried out, would place the whole travelling community, passing between Baltimore and Philadelphia, in the power of these companies. Accordingly the Philadelphia, Wil-

Wilmington and Baltimore Rail Road company was chartered, and went into operation and, as is always the case where there is competition, the travelling between those cities became reasonably cheap. This state of things continued for about two years and the people of Maryland, as well as the whole travelling public were much benefitted by the competition between the two routes, but the Philadelphia, Wilmington and Baltimore Rail Road company at length effected a combination with the Frenchtown and Newcastle Rail Road and Turnpike company, in defiance of, and in utter disregard of the Legislative prohibition before referred to. Your committee regard this as coming within the scope of their investigation, because the Steam Navigation company whose affairs they are directed to enquire into, is connected with the Frenchtown and Newcastle Rail Road and Turnpike company, and it is necessary, in order to come to a right understanding of the whole subject, to ascertain all the interests which have been united in this monopoly.

These two routes, thus united, commanded the whole of the travel until, by the establishment of a line of boats, driven by Erickson propellers, the Chesapeake and Delaware Canal became a serious rival. This combination finding itself entirely baffled, in establishing a monopoly, by the competition afforded by the line of steamboats through the canal, next addressed itself to the Chesapeake and Delaware Canal Company, in order as it would seem from the papers appended to this report, to get the control of that work also. The papers, herein referred to, will show an arrangement, now existing between the Philadelphia, Wilmington and Baltimore Rail Road Company and the Chesapeake and Delaware Canal Company, of a most extraordinary character, the motives to which and the results of which are very readily perceived. From the time of its going into operation, in 1829, up to the year 1842, the Chesapeake and Delaware Canal Company has been in the habit, as your committee are informed, of charging a gross sum for the passage of boats, conveying passengers through the canal, and in the latter year, they entered into an arrangement with J. P. Peck & Co., by which they were allowed to run a boat, driven by Erickson propellers, through the canal, upon the condition that they should have the privilege of carrying twenty passengers, free of toll, upon their paying 25 cents, per passenger, on all over twenty, and the usual freight charged by the company on merchandise. This arrangement was entered into for the term of three years, as will be seen by referring to document (A.) of the appendix; and Messrs. Peck & Co. continued to run a line of boats through the canal on the terms agreed upon in said contract, up to the 25th of July, 1843, when the Canal Company, seized with a holy horror of passengers, as it would seem, entered into another arrangement with Messrs. Peck & Co. by which they were required to pay \$1.50 per passenger for passing through the canal. This was not without a consideration on their part, because they also entered into an arrangement with the Philadelphia, Wilmington and Baltimore Rail

Road Company, at the same time, by which the Rail Road Company bound itself to raise the freight on merchandise to fifty cents per hundred pounds, on condition that the Canal Company would bind itself to charge on each passenger passing through the canal, one-half the *whole* amount charged by the Frenchtown and New Castle Rail Road Company for transporting passengers between Baltimore and Philadelphia. By this combination passengers were driven to the Rail Road Company, and freight on merchandise, &c. to the Steamboat Company, because they had always been carrying it at 25 cents per hundred pounds, until the Railroad Company reduced their rate. Here was a monopoly of an enlarged character, for not only were the travelling public now exposed to its selfish results, but the mercantile also; for it will be perceived that they did not even limit themselves to one-half of the charge on the Philadelphia, Wilmington and Baltimore Railroad, except the qualified limitation contained in said agreement, but required the Canal Company to charge one-half as much, for each passenger passing through the canal, as the Frenchtown and New Castle Company transported them the whole distance between Baltimore and Philadelphia; and this was done, as your committee conceive, to have the Canal Company entirely within their control, because by that line they were not, as by the Philadelphia, Wilmington and Baltimore Railroad, restricted to any rates. The motives to this agreement, it is not the province of your committee to canvass, but in its results it constituted and still constitutes a vast monopoly, in which the Chesapeake and Delaware Canal Company lent itself as the willing instrument of its late rivals, and thereby placed in their hands almost the whole travelling community. On the other hand, the Railroad Company, in the most shameless manner, bartered away, as far as they could do, the whole commercial interest dealing between those points. The exact result of this monopolizing scheme, the committee in their limited examination have not been able to trace entirely out, but they have discovered enough to illustrate its general tendency. Thus they find that in the month of June, prior to their entering into the arrangement, 1840 passengers passed through the Chesapeake and Delaware Canal, whilst in September, after the arrangement, but 421 passed through, and the number has been constantly diminishing since. Its effect upon merchandise, your committee have not had an opportunity of examining into, but it must be apparent to all that its results, in either case, must be disastrous to the public welfare. Your committee will now dismiss this part of the subject, by stating it as their decided opinion, that the Canal Company in exercising such unwarranted powers, have overleaped its authority, and in so doing has clearly violated its charter, and rendered itself liable to proceedings for a forfeiture thereof. In expressing this opinion, however, your committee do not recommend any ulterior measures against this company by which its charter should be forfeited, because they believe, that notwithstanding its flagrant abuses, it may still, by proper legislative restrictions, be made subservient to

the public interest. They would therefore urge upon the legislature the enactment of some provisions which will guard the public from the existing monopoly, and prevent in future any violations of this character. There is a necessity for this, not only to protect the travelling community, but also to foster and encourage other works in which the State is deeply interested. The two great competitors for the western travel, are identified, the one with the State of Maryland, and the other with the State of Pennsylvania. These are the Great Central or Maryland route, by the National Road and the Baltimore and Ohio Railroad, and Western Pennsylvania route, by the Pennsylvania improvements; and the only way in which the Maryland route can successfully compete with that of Pennsylvania, and thus gain for Maryland the benefit of the travel of the great West, is by being enabled to transport passengers at a cheaper rate than her rival. This she can very readily do if fair competition is offered at the eastern terminus of the route, that is, between Baltimore and Philadelphia, as a fair and reasonable rate of fare between those two places ensures to the benefit of the whole route through to the West, and thus enables the Maryland route to command the Western travel without difficulty. With the existing monopoly between Baltimore and Philadelphia, the most unreasonable charges for travel are made upon that portion of the route, and the consequence is that the whole Central route is thereby prejudiced and utterly unable to gain for the State the travel of the great West, which is, in the opinion of your committee, no small element in the prosperity of the State, and a matter regarded as highly important, in estimating the true character of this monopoly. With a view, therefore, to protect the travelling public, and also the interests of the State at large, your committee would recommend that the right to charge toll, *per capita*, upon passengers be granted to this company, guarded by such limitations and restrictions as will render the charge subservient to the public interest. They would recommend also that the maximum rate of such charge be twenty-five cents for the entire distance through the canal. In advising this rate of charge, your committee have no disposition whatever to deal in a spirit of illiberality with the company, but they have fixed this as the maximum amount, and consider it as absolutely *necessary* to protect the interests of the State and prevent the recurrence of these monopolizing combinations, at the same time they regard it as a very liberal charge. By referring to a table in the appendix, it will be found that it is very much higher than the tolls of any other canal whose tolls they have been enabled to ascertain. The very highest rates which your committee have met with, is that of the Tide Water Canal, which charges 7 25-45 mills per mile for each passenger, which would, at the same ratio, make the whole toll through the Chesapeake and Delaware Canal about ten and a half cents for each passenger. On the various other canals cited in the said table, it will be found that the toll varies from 2 to 4 mills a mile for each passenger. Your committee have, however, thought proper to name twenty-five cents,

which is at the rate, or nearly so, of $1\frac{3}{4}$ cents a mile, in a spirit of liberality towards this company, and they have been governed in this matter very much by the views of the company itself; for in a report made by the President and Directors of the Chesapeake and Delaware Canal Company, on the 5th of June, 1843, the following language is used, in addressing the stockholders, to wit:

"Since your last meeting, a daily line of steamboats has been established between this city and Baltimore, driven by Errickson propellers, which passes through the canal; and subsequently a third boat of the same character has been put on the route; and from the patronage they receive, it is very evident that the enterprise has proved successful, AND OF COURSE PROFITABLE TO THIS COMPANY."

It will be observed that they here say that the terms on which the boat was then running, was "*of course profitable to this company*," and it must be recollected, that those terms were not as advantageous to them as the rates herein recommended, because by their agreement with Messrs. Peck & Co. he was entitled to carry twenty passengers, free of all toll, and to pay twenty-five cents on the residue. Now, according to the opinion of the President of the Company, 40 passengers would be a fair average number for each boat, and therefore by their own arrangement, made solely for their own benefit, they agreed to receive just one-half of the amount herein proposed.

Your committee, therefore, in order to carry out their views, have herewith reported a bill, the passage of which they recommend to the House, as likely to effect what is clearly demanded by considerations of public policy and self-interest to the State of Maryland.

All of which is most respectfully submitted.

CHAS. B. CALVERT,
A. R. LEVERING,
WILLIAM LYNCH,
ZABDIEL WEBB POTTER,
EDWARD L. BOTELER

APPENDIX.

BALTIMORE, December 14th, 1843.

C. NEWBOLD, Jr. Esquire,

President Delaware and Chesapeake Canal company.

SIR:—Contemplating the establishment of a line of Steamboats for the conveyance of passengers, between Philadelphia and Baltimore, via the Chesapeake and Delaware canal. We are induced respectfully to inquire the terms upon which a boat, operated by steam or horses, will be allowed to pass through your canal. We should be glad also to understand, whether the terms are general, or if special, than if they are as favorable as will be granted to others. We should be pleased likewise to be informed if the rates of charges are permanent, or liable to be changed—and how long we might feel authorised to calculate upon the continuance of the terms, upon which you may be pleased to allow us to navigate the canal.

An early answer will oblige your obedient servant,

(Signed,) { STOCKTON & FALLS,
HUTCHINSON & WEART.

REPLY.

CHESAPEAKE AND DEL. CANAL OFFICE, }
PHILADELPHIA, Dec. 16th, 1843. }

GENTLEMEN: Your letter of the 14th inst., came to hand in my absence from the city.

The application you make is of so much importance, as to require that it should be laid before our Board of Directors on Tuesday next, before any definite reply can be given. In the mean time it will be desirable to know the description of boat you design using; if horse power the dimensions of the boat, and if steam the kind of propeller and size of the boat, and should you design to

use the Errickson propeller, will they be attached to the bow or stern of the boat?

In all cases our charge will be the same to all parties who may wish to use the canal, provided, the character of the conveyance is the same.

Your obedient servant,
(Signed,) C. NEWBOLD, Jr. President.

To Messrs. Stockton & Falls, and Hutchinson & Weart.

BALTIMORE, December 18th, 1843.

C. NEWBOLD, Esquire,

President Chesapeake and Delaware Canal company.

SIR: We have duly received your favor of the 16th inst. We are yet unadvised in regard to the description of boat which may be adopted, should we conclude to navigate your canal.

The size will of course be adopted to the easy passage of your locks—so as neither to do injury to the works, nor cause delay in passing them. We should like to be informed of the tolls per passenger, for the different kinds of boats you mention, and the difference of charge, if any, between the boats using the Errickson propeller in the stern or the bow of the boat.

Very respectfully,

Your obedient servants,

(Signed,) { STOCKTON & FALLS,
HUTCHINSON & WEART.

REPLY.

CHESAPEAKE & DEL. CANAL OFFICE, }
PHILADELPHIA, Dec. 20, 1843. }

GENTLEMEN: Your two letters of the 14th and 18th instants, have been laid before our Board of Directors, and they have instructed me to inform you, that our charge for toll on passengers through our canal, will be one-half the amount charged by the Newcastle and Frenchtown Turnpike and Railroad Company, for transporting passengers between the cities of Philadelphia and Baltimore; which has been this year, for adult white passengers three dollars each, and for colored two dollars each, and for children under eight years of age, half the above prices. Should these prices be changed, our toll will in like manner be changed, so as still to be one-half the rate charged by the aforesaid company. Should the arrangement with that company cease, it will continue to be the interest of this company to foster a line of passenger boats through the canal.

The speed at which passenger boats may run, must depend entirely upon the amount of injury they do to the banks of the canal, and they must always be subject to any general rules or regulations, which may from time to time be adopted by this company.

Your obedient servant,

[Signed,]

C. NEWBOLD, Jr., President.

BALTIMORE, Dec. 26, 1843.

C. NEWBOLD, Jr.,

President Chesapeake and Delaware Canal Company.

SIR: We have received your letter of December 20, 1843, informing us that your *tolls* for the privilege merely of carrying passengers through your canal, will be one half of the price charged for conveying passengers between Philadelphia and Baltimore, by the way of the Frenchtown and Newcastle Railroad; and that charge being now three dollars, your tolls will be one dollar and fifty cents per passenger. This is obviously a prohibitory enactment, the result as your letter would seem to imply, of an agreement with the proprietors of the aforesaid Railroad company.

We should be glad to be informed, if the terms mentioned, are the most favorable that may be expected for permission to convey passengers over your canal; or if your agreement with the Newcastle and Frenchtown Railroad company, is such as will probably continue to compel you to exclude travelling from the Chesapeake and Delaware Canal.

[Signed,]

{ STOCKTON & FALLS,
{ HUTCHINSON & WEART.

REPLY.

CHESAPEAKE & DEL. CANAL OFFICE, }
PHILADELPHIA, Jan. 2, 1844, }

GENTLEMEN: Your letter of the 26th ult. has been received, and in reply I have to observe, that this company believing they will be benefitted by the toll they have fixed on for passengers going through the canal, expect to continue the same for the present year.

We are not compelled by any engagement to exclude travelling from the canal, but, on the contrary, are anxious to increase it. The toll is not prohibitory, we having had a large business in passengers during the past season, nor is it too high, considering the cost of our canal.

Very Respectfully,

Your Obedient Servant,

[Signed,]

C. NEWBOLD, Jr. President.

To Messrs. Stockton & Falls and Hutchinson and Weart, Baltimore.

CORRESPONDENCE.

To the committee of the House of Delegates, appointed to enquire, among other things, whether "the Chesapeake and Delaware Canal company have forfeited their charter," which committee have been invested with power, to send for persons and papers.

GENTLEMEN:—The moment the Directors of the above named Company, heard of the appointment of the committee, they immediately, without knowing the extent of power granted to the committee, requested their President to proceed to the city of Annapolis, for the purpose of learning the nature of the charges made against the company, and to take the necessary steps to remove as far as might be in his power, the cause, or supposed cause of complaint.

Since my arrival here, to wit: on the 24th instant, I have received from the committee five interrogatories, which would have been immediately answered, but from an unavoidable delay in sending to Philadelphia for the necessary documents.

The interrogatories are as follows, viz:

1. State the amount of toll charged on each passenger, going through the canal, during the years 1840, 1841, 1842 and 1843, and if any change was made in the charges, during any of those years; state the time and amount of said change, and the cause thereof?

2. State the clause in the charter, or any of the supplements thereto, which authorises the canal company to charge toll on passengers?

3. Has the Chesapeake and Delaware Canal Company entered into any agreement or contract, with the Philadelphia, Wilmington and Baltimore Rail Road Company, or any other company, within the last three years, relative to tolls on said canal, and if so, furnish copies of said contracts or agreements?

4. Did or did not the said canal company enter into an agreement, during the year 1842, with a steam boat company, to run boats through the canal, and if so, was said agreement cancelled by all the parties thereto?

5. State the number of passengers who passed through the canal monthly, from the time of the establishment of the line of steam boats, which runs through the canal up to the present time?

In proceeding, Gentlemen, to answer the foregoing interrogatories, I must ask permission to change the order in which they stand.

1. During the years 1840 and 1841, there were no passengers going through the canal, nor in 1842, until after the 1st of August; after which time, and up to the 25th day of July, 1843, a part of the passengers were carried through the canal free of any charge to the owners of the boats, and on the number over 20 per day to each boat, they were required to pay twenty-five cents on every such passenger which they carried through, and since the 25th day of July, 1843, they have paid the canal company one dollar an

fifty cents, for every passenger thus carried by them through the canal : but you will please to observe the *passenger* has never been charged by the canal company, as the compensation, whether large or small, was always paid out of the passage money, charged by the owner of the boats ; and I beg to remark, that when the toll or charge or by whatever name it may be called, was only twenty-five cents, or even nothing, the passage money charged by the owner of the boats was two dollars and fifty cents for each passenger, and that when, and after the change took place in July, 1843, passengers were still carried for the same price of two dollars and fifty cents, from which sum, the owners compensated the canal company for the use of the canal. The cause of all these arrangements and changes will be found in the accompanying papers marked A. B. C. & D.

3. A contract or agreement was made in 1843, a copy of which is to be found in the papers above referred to.

4. An agreement was entered into in 1842, not with a steam boat company, but with private individuals ; for a copy of which I refer you to the papers before named, and it was cancelled by consent of all the parties interested.

5. For an answer to this, I refer you to the paper herewith submitted marked (E.)

2. This being the most important question, I have deferred it to the last. It is not pretended that there is any express grant to charge toll in respect of passengers carried in boats through the canal ; but for the constructive right to do so, the undersigned on behalf of the company, respectfully begs leave to refer you to the preamble, the 4th, 8th, 9th, 10th and 11th sections of the original act of incorporation ; and also to the preamble to a supplemental act, passed the 18th December, 1812, chapter 84, and the 10th section of a supplemental act passed the 25th day of May, 1836, bill No. 1.

The undersigned relies with the utmost confidence on the general scope and obvious meaning of the charter, and the several supplements thereto ; in which the right is no where prohibited, nor is the company in any case, directed or required to pass any person or thing free of toll, but is required under certain circumstances to pass vessels without charge, for which see the last clause of the 9th section of the original act.

It follows, I trust, as a matter of course, that if nothing can pass free, and nothing is excluded from passing, that boats carrying passengers may pass, and that such vessel so passing, must pay toll to the company, in respect of such passengers. I will submit to the committee, that during part of the year 1829, the whole season 1830, 1831 and 1833, there were regular lines of Steam boats transporting their passengers through the canal, and for which privilege they paid the company, and that no fact was more notorious, as during the season for boating in 1830 and 1831, there was no other communication for passengers between the cities of Baltimore and Philadelphia, and yet the right of the canal company to re-

ceive compensation for the use of their water by lines which were used exclusively for passengers, was never questioned by any one.

Relying then fully on our rights, and referring to the documents presented, and in lieu of any lengthened argument of my own, (which would unnecessarily occupy the attention of the committee) I respectfully refer you to the accompanying letter from John M. Scott, Esq. the counsel of the company in Philadelphia, addressed to their Secretary, and now marked (F. ;) and when the Honorable committee shall have examined this letter, and also a legal opinion from the same gentleman, marked (G.,) I feel well satisfied that they will arrive at the conclusion that the company has not violated its charter. In conclusion, I submit to the candid judgment of the committee, the consideration of the question of right to ask and receive compensation from the owners of boats and vessels carrying passengers through the canal; and even if the committee should differ in opinion with the counsel of the company, and the directors and the undersigned; I trust, nevertheless, that the committee will do the directors and myself the justice to believe that we supposed we had the undoubted right so to charge, and that the measure of compensation was an open matter for legitimate contract with the owners of vessels who desired to use the canal for the transportation of persons.

All which, is respectfully submitted to the Honorable committee, on behalf of the Board of President and Directors of the Chesapeake and Delaware canal company, by

C. NEWBOLD, Jr.

President.

Annapolis. January 31, 1844.

[A.]

ACTING COMMITTEE, May 24, 1842.

The following preamble and resolution, submitted and unanimously approved and recommended to the Board for their adoption, viz :

The proposition of J. B. Peck & Co. to run a line of packets between this city and Baltimore, through the Chesapeake and Delaware Canal, to be propelled in part by steam, being duly considered, it was

Resolved, That for the purpose of encouraging the direct trade, between Philadelphia and Baltimore through the canal, the privilege be allowed of carrying twenty passengers free of toll, to each boat that may be propelled by steam; provided a boat shall be run at least three times a week, from each of the said cities, by the party or parties agreeing to these conditions, or any other person or persons agreeing to these terms, subject however to such rules and regulations, as the Board of President and Directors may from time

to time establish, for the protection of the canal and works, and the other trade passing through the canal, and paying the usual tolls on merchandize, and on all passengers exceeding twenty in number, to each vessel. This resolution to take effect on the first day of August next, and continue in force for the term of three years, from that date; provided, these conditions shall be accepted by the parties above named, by a written communication to this Board, on or before the first of August next.

THE BOARD.—At a special meeting, May 30, 1842.

On motion, the preamble and resolution respecting the establishment of steam packet lines through the canal, as adopted at their last meeting, were considered by the Board, and unanimously adopted.

Repealed, by the Board, April 4, 1843.

THE BOARD.—At a stated meeting, August 2, 1842.

A communication from Jas. B. Peck and Wm. Lore, dated 27th ult. and received by Secretary on day of date, assenting to the terms of the resolution of the Board, May 30th, 1842, relating to a line of steam packets through the canal, was read and ordered to be placed on file.

THE BOARD, held a stated meeting, February 7, 1843.

The following minute was considered, and adopted unanimously, viz :

The rates of freight on merchandize, by the Baltimore Railroad, having been recently very much reduced, the following were appointed a committee, to consider of and report such measures, if any they should deem necessary, as may prevent the loss of that trade to the canal.

Messrs. Cope, Roberts and Scull, were appointed the committee.

[B.]

THE BOARD.—At a stated meeting, July 18, 1843.

The committee appointed on the 7th of February last, presented the following report and accompanying papers, which were read, viz :

“The committee appointed to report what measures might be advantageous for the trade on the canal to and from Philadelphia and Baltimore, submit herewith communications from a committee

of the Philadelphia and Wilmington Railroad company, and from Peck & Clyde, together with a copy which they made to the committee of the Railroad company.

7th mo. 17, 1843.

[Signed,]

HENRY COPE,
G. SCULL,
A. S. ROBERTS, } Committee.

PHILADELPHIA, July 15th, 1843.

To HENRY COPE, Chairman.

DEAR SIR: If an arrangement shall be entered into between the Chesapeake and Delaware Canal Company and the Philadelphia, Wilmington and Baltimore Railroad Company, also the Newcastle and Frenchtown Turnpike and Railroad Company, by which the latter companies shall agree to charge fifty cents per one hundred pounds upon all merchandize, (with the exception of live stock and marketing,) passing between Philadelphia and Baltimore, the undersigned do agree to relinquish a contract now existing with the Canal Company, for the special privilege for the carrying of passengers through the canal, and will agree to pay a toll on passengers by our boats, equal to one-half of the charge that shall be made by the Newcastle and Frenchtown Turnpike and Railroad Company and the Philadelphia, Wilmington and Baltimore Railroad company.

This contract to be binding, only so long as the last two named companies shall comply with the above contract or agreement.

[Signed,]

JAMES B. PECK,
THOMAS CLYDE.

[C.]

PHILADELPHIA, July 17th, 1843.

The undersigned, a committee of the Philadelphia, Wilmington and Baltimore Rail Road company, and the Newcastle and Frenchtown Turnpike and Rail Road company, in behalf of said companies will agree to charge fifty cents per hundred pounds upon all merchandise passing on their works, and boats to and from Baltimore to Philadelphia, and pro rata upon the same for shorter distances, with the exception of live stock and marketing. Provided, that the Chesapeake and Delaware Canal company will charge a toll on all passengers, passing through their canal to and from Philadelphia and Baltimore, equal to one-half of the charge that shall be made by the Newcastle and Frenchtown Turnpike and Rail Road company, provided, the charge for the transportation of passengers by that route, shall not exceed the charge by the Philadelphia,

Wilmington and Baltimore Rail Road company, either by the road or by the road and steamboats; and provided also, that on way passengers to and from any point along the line of the canal, between Delaware and Chesapeake cities, there shall be charged one half of the above stipulated rates of toll. The Newcastle and Frenchtown Turnpike and Rail Road company, and the Philadelphia, Wilmington and Baltimore Rail Road company, will furnish to the Chesapeake and Delaware Canal company a list of their rates of charge for passage on the different classes of passengers, and the charge on merchandise, and will make no variation from them without due notice to the Chesapeake and Delaware Canal company.

The undersigned, a committee, being vested with full powers by their respective boards, will consider the above agreement between the Philadelphia, Wilmington and Baltimore Rail Road company and the Newcastle and Frenchtown Turnpike and Rail Road company and the Chesapeake and Delaware Canal company, as concluded and perfected, so soon as you may have signified to us that your board of directors have agreed to the above terms.

Very respectfully,
 { M. BROOKE BUCKLEY,
 (Signed,) { A. J. LEWIS,
 { C. H. FISHER.

To Messrs. Henry Cope, G. Scull, and A. S. Roberts, Committee, &c.

[D.]

PHILADELPHIA, 7th Month 17th, 1843.

The undersigned, a committee of the Chesapeake and Delaware Canal company, will recommend to the directors of that company to charge a toll upon passengers passing through said canal to and from Philadelphia and Baltimore, equal to one half of the charge that shall be made by the Newcastle and Frenchtown Turnpike and Rail Road company; provided, that the charge for the transportation of passengers by that route shall not exceed the charge by the Philadelphia, Wilmington and Baltimore Rail Road company, and the Newcastle and Frenchtown Turnpike and Rail Road company charge fifty cents per hundred pounds upon all merchandise passing on the work and boats to and from Baltimore to Philadelphia, and pro rata upon the same for all shorter distances, with the exception of live stock and marketing—and provided also, that on passengers to and from any point along the line of the canal between Delaware and Chesapeake cities, there shall be charged one half of the above stipulated rate of toll.

The Newcastle and Frenchtown Turnpike and Rail Road company, and the Philadelphia, Wilmington and Baltimore Rail Road company, to furnish to the Chesapeake and Delaware Canal com-

pany a list of their rates of charge for passages on the different classes of passengers and the toll on merchandise, and not to make any variation from them without due notice to the Chesapeake and Delaware Canal company.

(Signed,)

HENRY COPE,
G. SCULL,
A. S. ROBERTS,

Committee.

To M. Brooke Buckley, A. S. Lewis, and C. H. Fisher, Committee, &c.

On motion, it was

Resolved, That the report of the committee on the trade to Baltimore be accepted, and that the plan and arrangements as proposed by said committee be acceded to, and that the President be requested to carry the same into effect,—and that the proposition of a relinquishment on the part of Peck & Clyde of their contract be also acceded to, and carried into effect on the conditions stated by the said Peck & Clyde.

Resolved, That the provisions of the above arrangement shall take effect on and after the 25th proximo.

Extract from the minutes of the board and of the acting committee.

PETER LESLEY, Secretary.

Philadelphia, January 22, 1844.

[E.]

Statement of the number of passengers (per month) carried by the Errickson Steam Boats, through the Chesapeake and Delaware Canal from the commencement of their running, Oct. 3, 1842, to Dec. 31, 1843.

1842, October,....	694	Passengers
“ November,.....	610	“
“ December,.....	267	“
1843, January,.....	36	“
“ February.....	30	“
“ March.....	590	“
“ April.....	1,034	“
“ May.....	1,713	“
“ June.....	1,840	“
“ July.....	1,566	“
“ August.....	694	“
“ September.....	421	“
“ October.....	543	“
“ November.....	560	“
“ December.....	227	“

PETER LESLEY, Secretary,
Chesapeake and Delaware Canal Co.

PHILADELPHIA, February 23, 1844.

TO CHAS. B. CALVERT, }
 W. LYNCH & } Committee.
 Z. W. POTTER, }

SIRS: Your communication was duly received, and in answer to your first and second question, I give as correct an answer as I conveniently can.

January 1843, Pass. 36; February 30; March 584; April 1021; May 1701; June 1832; July 1559. During the above months the tolls on passengers was twenty-five cents each, exclusive of twenty per day that we were allowed free, as per agreement. Our price for passage, was two dollars; but in consequence of ruinous opposition by the Rail Road Line, we were obliged to reduce the deck passage to fifty cents, which increased the travel of laborers, &c. very much.

Passengers in August 688; September 430; October 540; November 566; December 220. During the last named months, the canal company charged us one dollar and fifty cents on each passenger as toll; we charged two dollars and fifty cents for passage which only left us one dollar each for transporting passengers.

Answer to question 3.

The Philadelphia, Wilmington and Baltimore Rail Road Company, I presume, persuaded the canal company to raise their toll on passengers. We agreed to the proposal, although no contract was drawn.

Answer to question 4.

The price for passage was raised to two dollars and fifty cents after the toll was increased. No contract agreed to as to price for passage.

Answer to question 5.

The canal company did not increase the toll on freight. The price for transportation was the same during the past fall, that it was when we first commenced running the line; twenty-five cents per one hundred pounds dry goods. By the contract the canal company secured all the freighting business to the canal.

Very Respectfully,

PECK, CLYDE & Co.
 Proprietors of Line through the canal.

PHILADELPHIA, July 8, 1843.

C. NEWBOLD, Jr. President.

DEAR SIR: From your remarks yesterday afternoon in regard to a point of etiquette, I have thought that the Chesapeake and Delaware Canal Company might consider it proper that the Philadel-

phia, Wilmington and Baltimore Railroad Company should officially come forward to renew the negotiation which was broken off last spring. I *thought* therefore, beg leave to state, that Mr. C. H. Fisher is officially appointed, on the part of this company, to carry out that negotiation, and that he will wait upon your committee, at such time and place, as may be designated.

I am, Very Respectfully,
Your Obedient Servant,
[Signed,] M. BROOKE BUCKLEY, Pres't.

I certify that the above is a true copy from the original, now on the files in the office of the Chesapeake and Delaware Canal Company, Philadelphia.

The word "thought," in *italic*, not being in the original.

PETER LESLEY,
Sec'y of the Ches. & Del. Canal Co.
Philadelphia, Jan. 27, 1844.

CHESAPEAKE & DEL. CANAL OFFICE, }
July 10th, 1843. }

DEAR SIR: I am informed by your note of the 8th inst. just received, that Mr. C. H. Fisher is authorised by your company, to open or renew a negotiation with this company. I am requested by Mr. Cope, the chairman of a committee of this company, to say, he is prepared to see Mr. Fisher this morning, at the counting-house of the former.

Very Respectfully and Truly,
Your Obedient Servant,
C. NEWBOLD, Jr. President.

To M. Brooke Buckley, Esq., President Philadelphia, Wilmington and Baltimore Railroad Company.

I certify that the above is a copy of a paper, now on file in the office of the Chesapeake and Delaware Canal Company.

PETER LESLEY,
Jan. 27, 1844. Sec. of Ches. & Del. Canal Co.

OFFICE PHILADELPHIA, WILMINGTON R. R. Co.
PHILADELPHIA, July 18th, 1843.

DEAR SIR: I am in receipt of your favor of this date, and upon consultation with the committees of this and the Newcastle and Frenchtown Rail Road company, am directed to inform you, that the prices of passage between Philadelphia and Baltimore, during this season, will be fixed as follows:

By Newcastle and Frenchtown route—

For Adult passengers,.....\$3 each.

“ Colored “ 2 “

“ Children under 8 years, half price.

By Philadelphia, Wilmington and Baltimore Rail Road—

For Adult passengers,.....\$4 each.

“ Colored “ 3 “

“ Children under 8 years, half price.

The rate of freight, by both routes will be fifty cents per hundred pounds on all merchandise transported between Philadelphia and Baltimore, and proportionate rates for shorter distances.

The committees agree with me in opinion, that it is expedient to commence this arrangement as early as practicable, say on Thursday 20th inst.

Very respectfully,

Your obedient servant,

(Signed,)

M. BROOKE BUCKLEY,

President.

Caleb Newbold, Jr. Esq., President Chesapeake and Delaware Canal company.

—

I certify that the above is a true copy of the original now on file in this office.

PETER LESLEY,

Secretary of Chesapeake and Delaware Canal company.

Office of Chesapeake and Delaware Canal company, Philadelphia, January 27, 1844.

	Amou passe mile.
	Cents
	8
-	(\$360 distan
-	(\$14.8 distan
-	20
-	5
-	5

members
y exacte
extreme
whereva

A T A B L E ,

SHEWING THE RATES OF TOLL FOR PASSENGERS, upon improvements in the United States, and a comparison of the same, with the rate of 25 cents per passenger, proposed by the Committee to be allowed to the Chesapeake and Delaware Company, the length of its Canal being fourteen miles.

NAME OF WORK.	Amount of toll upon passenger boats per mile.		Amount of toll upon passengers per mile.		Gross toll per mile for each passenger.		What would be the toll per mile, on the Ches. and Delaware Canal, in the same ratio for each passenger.		What would be the toll on the Ches. and Del. Canal for the whole distance, according to the same ratio for each passenger.		What the committee, nevertheless, propose allowing to the Ches. and Delaware Canal, for the whole distance for each passenger.		REMARKS.
	Cents.	Mills.	Cents.	Mills.	Cents.	Mills.	Cents.	Mills.	Cents.	Mills.	Cents.	Mills.	
Chesapeake and Ohio canal,	8	0	0	0	0	0	0	0	2½	0	25	0	There is no toll whatever allowed for passengers upon this work.
Tide Water Canal, - - -	(\$360 for the entire distance of 45 miles.)		0	5½	0	7½	0	7½	10	5	25	0	The length of this canal is 45 miles. The toll of \$360 upon the boat is to be divided among the passengers it will contain. Say that the boat will hold 40 passengers. This would make for each 9 cents through, or 2 mills per mile on account of the boat, to this is to be added the toll of 5 25-45 mills per mile upon the passenger, making the gross toll 7 25-45 mills per mile as stated. This is the <i>highest</i> toll the committee have met with on any canal.
Schuylkill Navigation, - -	(\$14.80 for the whole distance of 108 miles.)		0	0	0	3½	0	3½	5	2	25	0	This work lies between Fairmount and Port Carbon, Pa., a distance of 108 miles, the \$14 80 is charged upon the boat for the entire distance. Nothing is charged for the passengers <i>per capita</i> calculating as before, 40 passengers to each boat, the toll would be for each passenger 36 cents 4 mills through, or 3 40-108 mills per mile. On this improvement <i>there is also allowed to each passenger 75 lbs. of baggage without toll.</i>
Union Canal, - - - -	20	0	0	0	0	5	0	5	7	0	25	0	There is no toll for passengers <i>per capita</i> allowed upon this work. Allowance is made as heretofore for 40 passengers to a boat.
Pennsylvania Canal, - - -	5	0	0	5	0	6½	0	6½	8	7½	25	0	The calculation is here made as heretofore, for 40 passengers to a boat.
New York Canals, - - -	5	0	0	1	0	2½	0	2½	3	1	25	0	In New York 5 cents per mile is allowed for the boat. Say the boat will contain 40 passengers. This will be equal to 1½ mills per mile to each passenger on account of the boat. To this add the one mill per mile for the passenger himself, and the gross toll will be 2½ mills per mile, as stated. See the Statistic's on this in the 4th vol. Hunt's Merchant's Magazine, pag. 566.

NOTE.—It is to be remembered that the Chesapeake and Delaware Canal Company furnishes no *motive power*, and *are at no expense whatever*, as to boats passing through their canal. The toll of 25 cents per passenger, proposed to be allowed, and which has been heretofore *illegally* exacted, is for the mere privilege of *passing through* the canal, which its charter declares to be a *public highway*. When these facts are considered, as well as the comparisons instituted in the table above, the toll of 25 cents per passenger will appear to be *extremely liberal*.

In the statement above, wherever there was a *maximum* and *minimum* rate, the *maximum* rate has in every instance been taken.

[Document X.]

BY THE HOUSE OF DELEGATES

February 20, 1844.

Read and ordered to be printed.

A N S W E R

OF THE

President of the Baltimore and Ohio Rail Road Company,

TO INTERROGATORIES

PROPOUNDED BY THE HOUSE ON THE 20th FEBRUARY,

WITH THE

ACCOMPANYING REPORT

OF

BENJ. H. LATROBE, Esq.

CHIEF ENGINEER.
